

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-184087

DATE: September 16, 1975

MATTER OF: Haber Aircraft Company, Inc.

DIGEST:

1. In sale of surplus Government property, unused and in good condition, purchaser's bid modification by telegraph that was approximately 1.85 times next high bid, 3.4 times current market appraisal, and 5.18 percent of acquisition cost, did not place contracting officer on constructive notice of possible error in bid.
2. When telegraphic bid modifications are authorized by invitation and telegraph company timely notified contracting officer by telephone, later confirmed in writing, of bid modification to include additional items, contracting officer may properly consider bid as modified.

Haber Aircraft Company, Inc. (Haber), has requested rescission of its contract awarded under a sealed bid sale of surplus aircraft components offered by the Defense Property Disposal Service, Memphis, Tennessee. Haber submitted a bid for numerous items. At the request of International Engine Parts, Inc., Haber modified its bid by telegraph, as authorized by the solicitation, to add bids for three other items including a bid of \$1.02 each for item 301, turbine rotor blades. Notice of the modification was timely given to the contracting officer by telephone by the telegraph company and later confirmed in writing. The high bid of \$38 was discarded as not responsive due to its lack of signature. Haber was awarded contract No. 31-5208-077, which included item 301, on February 7, 1975. Haber states that its bid for item 301 was intended to be \$0.102 but was erroneously transmitted to the Defense Surplus Sales Office by the telegraph company. International's worksheet confirms that the bid it intended Haber to submit for it was \$0.102.

The range of the other bids received was from \$0.55 to \$0.00002. The total acquisition cost of the 10,000 rotor blades, which were described as unused and in good condition, was \$196,800. The "current market appraisal" was \$0.30 a unit.

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The general principle applicable to this case is that a purchaser's unilateral mistake in bid will not excuse him from a contract subsequently awarded unless the contracting officer knew or should have known of the mistake. Corbin on Contracts § 610; Wender Presses, Inc. v. United States, 343 F.2d 961 (Ct. Cl. 1965); Saligman v. United States, 56 F. Supp. 505 (E.D. Penn., 1944); Kemp v. United States, 38 F. Supp. 568 (D. Md., 1941). There is no evidence in the present record to indicate that the contracting officer accepted Haber's bid with actual knowledge of error. As to when the contracting officer should be charged with constructive notice of error, the test is one of reasonableness; whether under the facts of the case there were any factors which should have raised the possibility of error in the mind of the contracting officer. See Acme Refining-Smelting Company, B-181967, August 20, 1974, 74-2 CPD 113. The possibility of error must be sufficient to reasonably cast upon the contracting official the duty to make inquiry, which inquiry would lead to the requisite knowledge. See Wender Presses, Inc. v. United States, supra.

A close scrutiny of the highest bid received prior to the making of an award is a required procedure to insure that the high bid is "not so far in excess of" the next highest bid or of the current appraisal as to indicate a mistake. Part 3, chapter VIII, paragraph F 3.e. of the Defense Disposal Manual (Defense Supply Agency Manual 4160.21-m, March 21, 1967). The above-cited paragraph does not define the term "not so far in excess of" nor does it describe any ratio at which the high bid should be regarded as so far in excess of the second highest bid or of the current market appraisal as to require verification. As we stated in B-160226, April 26, 1967, "Such determinations, which require consideration of a variety of factors, are left to the sound personal judgment of the contracting officers, and we believe properly so, particularly where good conditioned items that may have value for use as originally intended are involved." In the present case, it was the judgment of the contracting officer that verification was not required.

In any event, the range of bids in and of itself is not sufficient in this case to establish a reasonable possibility of

error. A wide range of variation among the bids is customary in the sale of surplus property. Bid prices on surplus property generally reflect the many possible intended uses of the property known only by the individual bidders. United States v. Sabin Metal Corporation, 151 F. Supp. 683 (S.D.N.Y., 1957), aff'd 253 F.2d 956 (2d Cir., 1958), citing with approval, 16 Comp. Gen. 596 (1936). See B-160226, supra; B-168258, December 9, 1969. "[T]he difficulties attendant to the establishment of a meaningful value by Government sales personnel, above which prices on such items would be conclusively regarded as a matter of law to be out of proportion to the possible value of the item to the particular bidder concerned and constitute notice of error, are readily apparent." B-160226, supra. Each case should be examined on its own merits. Haber's bid was 185 percent higher than the second highest responsive bid. However, the second highest bid was 325 percent higher than the third and 455 percent higher than the fourth. Haber's bid was high but it did not tower over the other bids. Considering the wide range of bids, the price, in itself, would not necessarily have put the contracting officer on notice that the bid was incorrect. See Alabama Shirt & Trouser Co. v. United States, 121 Ct. Cl. 313, 331 (1952).

Haber's bid was 3.4 times greater than the current market appraisal. The appraisal in this case is of questionable significance for purposes of constructive notice of error. A current market appraisal is defined as the lowest price, as predetermined, for which an item will normally be sold. The basic purpose is guidance to the contracting officer in determining the absolute minimum acceptable price. B-160226, supra. The fact that Defense Department Disposal Service sales history does not reflect that turbine rotor blades like those described in item 301 have previously been sold further erodes the significance of the current market appraisal. The discrepancy between Haber's bid and the "current market appraisal" was not sufficient to place the contracting officer on notice of possible error.

The determination that Haber's bid price, in itself, would not necessarily have put the contracting officer on notice of

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possible error is buttressed when Haber's bid is considered in relation to the original value of the item as represented by the acquisition cost thereof. See B-160226, supra. Haber's bid was but 5.18 percent of the acquisition cost of item 301, as indicated in the IFB. The rotor blades were listed in the invitation as unused and in good condition. When viewed in light of the above facts the possibility of error was not sufficiently high to cast upon the contracting officer the duty to make inquiry.

The telegraphic modification was a responsive bid. A telegraphic modification of a bid received in the contracting office by telephone from the receiving telegraph office not later than the time set for opening of bids may be considered when the message is confirmed by the telegraph company by sending a copy of the written telegram which formed the basis for the telephone call. 51 Comp. Gen. 831 (1972). The means of communication of the bid modification was not a sufficient additional factor to place the contracting officer on constructive notice of error.

Consequently, there is no legal basis for rescinding the contract and the request for relief must be denied.

Handwritten signature in black ink, appearing to read "R. F. K...".
Deputy Comptroller General,
of the United States